

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IVORY J. THOMAS and OFFICE OF PERSONNEL MANAGEMENT,
EMPLOYEE & LABOR RELATIONS, Washington, D.C.

*Docket No. 96-1229; Submitted on the Record;
Issued February 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on August 21, 1995 causally related to her July 11, 1994 employment injury.

On August 9, 1994 appellant filed a claim for a traumatic injury on July 11, 1994 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for muscle strain of the right shoulder. On October 3, 1994 appellant returned to her regular employment.

Appellant filed a notice of recurrence of disability on August 21, 1995 alleging that on that date she sustained a recurrence of disability due to her July 1994 employment injury. By decision dated February 9, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between the injury and the claimed condition or disability.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports

¹ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

that conclusion with sound medical reasoning.² Causal relationship is a medical issue and can be established only by medical evidence.³

However, proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁴

In support of her claim, appellant submitted a report dated November 14, 1995 from Dr. Ari M. Lieman, a Board-certified internist, who discussed appellant's July 11, 1994 employment injury and history of medical treatment received following the injury.⁵ Dr. Lieman stated that he initially treated appellant on August 1, 1994 at which time he "found significant sensory and motor deficits in her right upper extremity, suggesting a cervical radiculopathy." He noted that a magnetic resonance imaging study revealed focal disc herniation at C4-5, and that appellant received treatment for a right upper extremity pain from July 11 to August 11, 1994, underwent physical therapy from September 22 to December 1, 1994, and received treatment for recurrent arm pain on March 20, 1995. Dr. Lieman related that he treated appellant on August 21, 1995 for recurrent arm pain made worse by typing on the computer. Dr. Lieman stated:

"In my opinion, the condition beginning on August 21, 1995 is a recurrence/exacerbation of the injury sustained on July 11, 1994. Her symptoms and exam[ination] are consistent with the same cervical radiculopathy, and since she has not undergone surgery, the structural abnormalities in her neck are still present. Her symptoms were probably exacerbated by her work typing on a computer."

In his report, the Board notes that Dr. Lieman provided a history of injury, identified bridging symptoms, and diagnosed causal relationship. Although his report does not contain sufficient detail or medical rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that she sustained a recurrence of disability causally related to her July 11, 1994 employment injury, it raises an inference of causal relationship sufficient to require further development of the case record by the Office.⁶ Additionally, there is no opposing medical evidence in the record.

² *Stephen T. Perkins*, 40 ECAB 1193 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁵ Appellant also submitted a verification of treatment for cervical radiculopathy on September 6, 1995 and verification of treatment forms indicating that she was unable to work from August 21 to 25, 1995 and September 14 to 22, 1995 due to cervical radiculopathy.

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Therefore, on remand, the Office should refer appellant, together with the case record and a statement of accepted facts, to an appropriate medical specialist for a well-rationalized opinion, based on a complete and accurate factual and medical background, regarding the causal relationship between appellant's current condition and the accepted employment injury. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated February 9, 1996 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
February 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member